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RESEARCH ARTICLE

The Status of Religious Minorities in Hanafi Jurisprudence and Its Comparison with Other Jurisprudential Schools

Mohammad Ibrahim Zaki[1], Noorullah Mohammadi[2], Bazmohammad Forogh[3]*

1,2Department of Jurisprudence and Law, Faculty of Sharia, Bamyan University, Bamyan, Afghanistan.
3Department of Educational Administration, Faculty of Education, Bamyan University, Bamyan, Afghanistan.

ABSTRACT

Since the advent of Islam, religious minorities, specifically Jews, Christians, and Zoroastrians, have lived within Islamic societies under the status of Ahl al-Dhimmah. Islam has recognized them as citizens and granted them substantial rights. While there is a consensus among various Islamic Schools of jurisprudence regarding the rights of Ahl al-Dhimmah on most legal issues, differences of opinion exist on certain significant jurisprudential matters, such as Diyat and Qisas. An analysis of these issues reveals that, according to many jurisprudential Schools, the status of religious minorities is considered inferior to that of Muslims, and their rights are not equal. In contrast, the Hanafi School of jurisprudence bases its perspective on the principles of respect and equal rights for religious minorities, positioning them on par with Muslims. This reflects the dynamism and relevance of the Hanafi School in the modern era, characterized by diversity of nationalities and beliefs. The objective of this descriptive-analytical research is to elucidate the Hanafi jurisprudential perspective on the rights of religious minorities and to compare it with the viewpoints of other Islamic legal Schools. The findings demonstrate that the Hanafi School's stance is more open and flexible compared to other jurisprudential traditions, making it particularly applicable in contemporary times. This research employs a qualitative methodology, relying on data collected through library-based research. The results affirm that the Hanafi jurisprudential approach to the rights of religious minorities is notably inclusive and adaptable, underscoring its practical relevance in the modern world.

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Introduction

The issue of religious minorities has consistently been a tangible reality within Islamic societies. Throughout various historical periods, significant numbers of non-Muslims have resided as citizens within Islamic countries. In the contemporary era, religious minorities have become an increasingly important topic of scholarly discussion and reflection. Today, many citizens from non-Muslim countries live within Islamic societies. This reality prompts the fundamental question: What approach has Islam adopted toward such individuals? Has it legislated specific laws for them, or are the general laws of Islamic countries applied to them without distinction? In analyzing this question, it should be noted that Islam has never compelled such individuals to abandon their religion or convert to Islam. Rather, Islam has adopted an approach of engagement and mutual recognition by formally acknowledging them as citizens while instituting specific laws for them. These laws and their accompanying commitments are designed to serve the interests of both parties. Islam imposes the jizya on them and requires that they respect the laws of the host Islamic country while refraining from actions that would oppose Islam. In return, Islam commits to protecting them as full citizens.

The Islamic perspective on the rights of religious minorities has consistently been regarded as a significant and occasionally contentious issue within Muslim societies. In today's interconnected world, where

*Corresponding Author:
Email: mzakibamyani@gmail.com (*Zaki. M. I.*)
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humanity is moving toward the concept of a "global village," this importance has multiplied exponentially. Currently, people with diverse religious beliefs and worldviews reside in many Islamic countries, making Islam's interaction with such individuals particularly crucial. The primary question concerns how Islam treats their beliefs and religious perspectives. The subsequent question addresses whether Islam has legislated specific laws for them or subjects them to general laws without distinction. Islam demonstrates respect for the beliefs of Ahl-Dhimmah and, to ensure peaceful coexistence between them and Muslims, has introduced specific legal provisions in areas where theological differences exist. It should be noted that many civil regulations, such as traffic laws and administrative procedures, are generally applicable to all members of society regardless of religion. However, certain areas of law differ based on religious belief.

For instance, in matters of personal status law (Ahwāl shakhsiyya), Islamic beliefs differ from those of other religions. Therefore, it becomes necessary for Islam to either recognize the internal legal systems of other religious communities or, when needed, formulate specific laws for their followers within an Islamic legal framework. Most laws that Islam has introduced for religious minorities are commonly accepted across various Islamic Schools of thought. However, notable differences exist between the legal interpretations of these Schools. The origins of these differences lie in varying hadīths and the differing practices of the Companions and early caliphs in their interactions with religious minorities. These discrepancies have led to significant jurisprudential divergence, with each School forming its unique perspective toward Ahl-Dhimmah.

Among the key areas of disagreement are the laws of retaliation (Qisās) and blood money (Diyya). Most Islamic Schools do not consider religious minorities to have equal legal status with Muslims in these areas. For instance, they often do not permit a Muslim to be subject to retaliation for the intentional killing of a non-Muslim. Similarly, they consider the blood money owed for killing a non-Muslim to be less than that of a Muslim. However, the Hanafi School maintains legal parity between Muslims and Ahl-Dhimmah. It recognizes the right of retaliation for the intentional killing of a non-Muslim by a Muslim and stipulates equal blood money for both (Marghinānī, 1417 AH, vol. 8, p. 12).

Since the advent of Islam, two groups from other religions have lived within Islamic societies: followers of Judaism and Christianity. Islam never compelled them to change their religion and accept Islam (The Holy Qur'an, Al-Baqarah 2:256) but asked them to respect Islamic laws and regulations in the social sphere and pay the jizya to the Islamic government. In return, it committed to accepting them as citizens and granting them all the privileges of a citizen, akin to a Muslim.

Many rulings concerning religious minorities are united and shared among the Islamic Schools of law, but differences of opinion exist on some matters. On contentious issues, the Hanafi School is often on one side, with the other Islamic Schools on the other. Disputed subjects such as qisās and diyya are among the most significant jurisprudential topics. The Hanafi jurisprudence considers religious minorities equal to Muslims in matters of qisās and diyya, whereas the other Schools differentiate between them (Marghinānī, 1417 AH, vol. 8, p. 12).

This demonstrates the dynamism and flexibility of the Hanafi School, making it a valuable model for all Muslims in the contemporary era.

Research Objectives

Main Objective: To examine the status of religious minorities in Islamic societies from the perspective of Hanafi jurisprudence and compare it with the views of other Islamic Schools of law.

Secondary Objectives

1. To explore the Hanafi perspective on religious minorities.

2. To identify points of divergence between Hanafi jurisprudence and other Islamic Schools concerning religious minorities.

3. To compare the Hanafi School's stance with other jurisprudential Schools.

4. To examine the distinctive features and advantages of the Hanafi approach regarding religious minorities.

Research Questions

Main Question: What is the status of religious minorities in Islamic societies according to Hanafi jurisprudence, and how does it differ from other jurisprudential Schools?

Sub-questions

1. What is the Hanafi perspective concerning religious minorities?

2. What are the most significant jurisprudential issues on which Islamic Schools differ regarding religious minorities?

3. In what ways does Hanafi jurisprudence differ from the views of other Islamic Schools?

4. What are the strengths and advantages of Hanafi jurisprudence compared to other Islamic Schools regarding religious minorities?

Literature Review

Numerous works have addressed the jurisprudential rulings concerning religious minorities. In classical Islamic jurisprudence, discussions about Ahl-Dhimmah are found throughout various chapters, often addressed in different legal contexts. When divergences among Islamic Schools regarding their rights have occurred, those differences have typically been noted. Among classical Arabic texts, Al-Hidāyah stands out prominently. In this work, Marghinānī, in the chapter on qisās, elaborates on the Hanafi School's perspective regarding the killing of a dhimmī by a Muslim. He maintains that if the killing is intentional, the Muslim perpetrator should be subject to qisās, and if accidental, full diyya (blood money) should be paid. Marghinānī also presents the opinions of other Schools and notes that their positions differ from the Hanafi School in both the laws of retaliation and blood money (Marghinānī, 1417 AH, vol. 8, pp. 13, 71).

Furthermore, Shāhrūdī, in Volume 3 of the Encyclopedia of Comparative Islamic Jurisprudence, dedicates approximately 27 pages to a comparative analysis of the views of Islamic Schools on Ahl al-Dhimmah. His research demonstrates that while consensus exists among Schools on many rulings, notable differences, particularly between the Hanafi School and others, persist (Shāhrūdī, 1432 AH, vol. 3, pp. 546–573).

Additionally, some scholars have authored independent works specifically focused on religious minorities. For example, Ibn Qayyim al-Jawziyya wrote a comprehensive work titled Ahkām Ahl-Dhimmah (The Legal Rulings Concerning the People of the Covenant), spanning three volumes and 1,748 pages. This work provides extensive discussion on jurisprudential rulings related to Ahl-Dhimmah.

In Persian literature, several articles have addressed the Islamic perspective on the rights of religious minorities Davoud Gohari and Zahra Zivari Mirzaei., in their article A Study of the Rights of Religious Minorities in the Jurisprudence of Islamic Schools, published in the international journal Qānūn-Yār (Vol. 5, Issue 17, Spring 1400 SH), examine in detail the rights of religious minorities.

Omīd Ahmadzāde, in his article A Study of the Rights of Religious and Ethnic Minorities in the Government of the Prophet of Islam, published in the journal Islamic Human Rights Studies (Year 1, Issue 2, Winter 1391 SH), explores Islam's stance on minority rights during the Prophet's governance. A notable feature of these Persian-language articles is their primary focus on the rights and responsibilities of Ahl-Dhimmah. However, they do not engage in comparative analysis of the views held by various Islamic Schools of jurisprudence, nor do they systematically compare these legal opinions.

Methodology

This study employs a descriptive-analytical research method. Data related to the subject matter has been gathered primarily through the examination of books and scholarly articles, subsequently analyzed, and evaluated accordingly. To ensure a comprehensive understanding and achieve the most reliable results, this research began with an extensive review of numerous jurisprudential works spanning various chapters of Islamic law and different legal Schools. In total, approximately 45 books and 10 articles were examined. From this initial corpus, 17 books and 2 articles were ultimately selected as primary references for this study.

In jurisprudential research, which is predominantly based on library and textual resources, the most crucial element is not merely data collection, but rather the methodology of processing, analyzing, and critically examining scholarly material. This methodological approach has been applied with particular care and

precision in the research of prominent Islamic jurists and scholars. Additionally, this study adopts both descriptive and comparative approaches, meaning it not only describes existing views but also compares the positions of the Hanafi School with those of other Islamic jurisprudential Schools.

Definition of Dhimmi

Linguistically, dhimma signifies protection, covenant, or responsibility (Bustani, 1997, p. 410). People of the dhimma are called dhimmīs because they are under the protection and guarantee of Muslims (Mishkinī, 2013, p. 280). In jurisprudential terminology, it refers to a specific covenant between the Islamic ruler and the Ahl-Kitāb residing in Islamic territories, known as the dhimma pact (Shāhrūdī, 2003, p. 711). The purpose of this agreement is to end conflict and hostility between religious communities and promote peaceful coexistence between Muslims and non-Muslims under Islamic governance.

Who Are Religious Minorities?

In Islamic sources, the term Ahl-Kitāb (People of the Book) is commonly employed. All Islamic Schools unanimously consider Jews and Christians to be Ahl-Kitāb. However, regarding Zoroastrians, two perspectives exist: Some scholars believe the term Ahl-Kitāb is exclusive to Jews and Christians and does not encompass other faiths. For example, Ibn Qayyim al-Jawziyya does not regard Magians (Zoroastrians) as Ahl-Kitāb, although he believes they remain subject to the jizya tax (Ibn Qayyim, 1417 AH, vol. 1, p. 81). Another perspective argues that although Zoroastrians are not formally part of Ahl-Kitāb, due to ambiguity surrounding their scriptures, they are legally treated as such in Islamic jurisprudence (Group of Scholars, 1423 AH, vol. 19, p. 106). Conclusion: Religious minorities refer to those who possess divine scriptures and reside in Islamic territories.

Ahl-Dhimma and the Jizya Tax

Jizya represents a well-established tax levied on dhimmīs, collected annually by the Islamic ruler (Turayhī, 1996, vol. 1, p. 85). It constitutes essentially a per capita tax imposed on religious minorities of certain age and under specific conditions, in exchange for the protection of their lives and property under the governance of a Muslim-majority state. The imposition of jizya is not only permissible but obligatory according to the Qur'ān and Sunna. It was collected from Ahl-Kitāb during and after the time of Prophet Muhammad (peace be upon him). Under Islamic rule, non-Muslims were offered three choices: Acceptance of Islam, Warfare, or Agreement to the dhimma contract, which included the obligation to pay jizya.

Qur'ānic Evidence

"Fight those who do not believe in Allah and the Last Day, nor forbid what Allah and His Messenger have forbidden, nor follow the religion of truth—among those who were given the Scripture—until they pay the jizya with willing submission, and feel themselves subdued." (Sūrah al-Tawba, 9:29)

Rights of Religious Minorities in Islam

In exchange for paying jizya, Islam guarantees several rights to dhimmīs:

1. Right to Security and Protection

Once the dhimma contract is concluded, the Islamic state becomes obligated to protect the life (Hasfaki, 1423 AH, vol. 4, p. 305) It is stated in the hadiths of the Prophet Muhammad (PBUH) that it is not permissible to harass the Dhimmi infidels. He said, "Whoever harasses and belittles a Dhimmi who pays the Jizya, I will be his enemy on the Day of Judgment." (Abū Naeim Isfahānī, 1422 AH, vol. 3, p. 119) Wahba al-Zuhaylī writes: "After the jizya contract, their lives, wealth, land, and honor are protected and inviolable for Muslims." (Zuhaylī, 1985, vol. 6, p. 445) He also cites Imam ʿAlī (RA): "Whoever is under our protection, his blood is like ours." (Dāraqutnī, 1424 AH, vol. 4, p. 179) Another hadīth states: "Beware! Whoever wrongs a covenant-holder (muʿāhad), belittles him, burdens him beyond his capacity, or takes anything from him without his consent, I will be his advocate on the Day of Resurrection." (Abū Dāwūd, vol. 3, p. 136)

2. Respect for Religious Beliefs and Practices

Islam respects the beliefs of dhimmīs. They are permitted to perform their religious rituals within Islamic territories under certain conditions. During the time of the Prophet and the caliphs, Jews in Medina were allowed to freely observe their religious practices in their synagogues.

3. Right to Trade, Ownership, and Economic Activity

Religious minorities enjoy comprehensive property rights, including trade and commerce. They may own goods, even

items such as wine or pork, which are not considered "property" in Islamic law, and if a Muslim damage such goods, compensation is due. They may engage in any profession not in conflict with the dhimma contract. The Prophet and his companions frequently engaged in business transactions with Jews in Medina.

4. Freedom in Personal Status Laws (Aḥwāl Shakhṣiyya)

Islam recognizes the validity of marriages, divorces, and other personal status matters conducted among non-Muslims according to their own religious laws.A fundamental legal principle in Islamic jurisprudence is al-ilzām, obligating non-Muslims to adhere to the rulings of their own religions. Hadīth basis: "Compel them to what they have obliged themselves to." (Al-Ṭūsī, 1986, p. 322) Thus, in Islamic courts, dhimmīs are judged according to their own religious legal systems, and even after converting to Islam, they remain responsible for fulfilling any prior non-Islamic obligations.

The Rights of Religious Minorities from the Perspective of Hanafi Jurisprudence and Comparison with Other Islamic Schools of Thought

This section constitutes the primary focus of this article. Many jurisprudential rulings concerning dhimmīs are agreed upon by all scholars; however, specific issues exist where opinions diverge. In these disputed matters, examining and comparing the views of Islamic Schools reveals that the Hanafi School generally maintains a more open and respectful attitude toward religious minorities compared to other Schools. Although numerous such issues exist, the most significant ones are outlined below:

(A) Qiṣāṣ (Retribution)

Qisās represents one of the most significant jurisprudential topics because it concerns human life and death. It constitutes a punishment legislated by Sharīʿa for intentional murder. The philosophy behind qisās is the preservation of social life. Allah states in the Qur'ān: "O you who have believed, prescribed for you is legal retribution for those murdered—the free for the free, the slave for the slave, and the female for the female…" (Sūrah al-Baqarah 2:178–179) Despite this clear text, many challenging issues arise regarding qisās. For instance, if a Muslim intentionally kills a non-Muslim, is qisās applied or not? Most Islamic Schools require equality and parity between the killer and the victim for qisās to apply, meaning the killer's status should not exceed that of the victim. Since Muslims are considered superior to non-Muslims, qisās is typically not applied when the killer is Muslim and the victim is non-Muslim. This principle also applies to free persons and slaves. Therefore, according to most Schools (Mālikī, Shāfiʿī, Hanbalī, and Jaʿfarī Shīʿa), qisās does not apply in these cases. However, the Hanafi School opposes this perspective. In Hanafi jurisprudence, a Muslim and a dhimmī, as well as a free person and a slave, are regarded as equals. Thus, if a Muslim kills a dhimmī intentionally, qisās is applicable. ʿAllāmah Marghinānī explicitly states: "A Muslim is equal to a dhimmī." Consequently, qisās becomes obligatory in such cases. (Marghinānī, 1417 AH, vol. 8, p. 77).

(B) Diyya (Blood Money)

Diyya constitutes compensation paid for unlawful killing or bodily harm, and its amount is determined according to the social status of the victim. Disagreement exists over the amount of diyya for a non-Muslim dhimmī. All Schools except Hanafi maintain that the diyya for a dhimmī is less than that of a Muslim. The Shāfiʿī School sets the diyya for Jews and Christians at 4,000 dirhams and for Zoroastrians at 800 dirhams—less than half the diyya for Muslims (Shafiʿi, 1990, vol. 6, p. 10). The Mālikī School values the diyya for Jews and Christians at 6,000 dirhams, which exceeds half the Muslim diyya. The Jaʿfarī School assigns 800 dirhams for a dhimmī male and half that amount for a female. In contrast, Hanafi jurisprudence holds that the diyya of a Muslim and a dhimmī are equal. Marghinānī states clearly in Al-Hidāya: "The diyya of a Muslim and a dhimmī are equal." (Marghinānī, 1417 AH, vol. 8, p. 44).

(C) Revival (Reclamation) of Dead (Vacant) Lands

One jurisprudential ruling related to religious minorities concerns the revival of dead (vacant) lands. According to all Islamic Schools, the revival of dead lands constitutes a right of all Muslims. The Hanafi School requires the permission of the Imām (ruler)The Shāfiʿī and Hanbalī Schools do not consider the Imām's permission necessary (Marghinānī, 1417 AH, vol. 4, p. 383; al-Shāfiʿī, 1410 AH, vol. 4, p. 43). Regarding dhimmīs, disagreement exists. Most Schools do not recognize the right of dhimmīs to revive dead lands, whereas according to Hanafi jurisprudence, if a dhimmī revives dead land, they become its owner. (Marghinānī, 1417 AH, vol. 5, p. 284).

(D) The Right of Dhimmīs to Judge

Another area of jurisprudential disagreement concerning dhimmīs involves whether they have the right to serve as judges in Islamic lands. The fundamental principle agreed upon by all Schools is that being Muslim constitutes one of the conditions for a judge. This is supported by the Qur'ānic verse: "And Allah will never give the disbelievers over the believers a way [to overcome them]." (Sūrah Al-Nisāʾ 4:141) The question remains whether dhimmīs are permitted to judge among themselves within Islamic lands. All Schools oppose this, citing the above verse. However, the Hanafi School preserves the right of dhimmīs to adjudicate in matters relating to themselves (Zaydān, 1989, vol. 1, p. 26).

(E) Entering Mosques

Another controversial topic regarding dhimmīs is their right to enter mosques. According to Hanafi jurisprudence, no religious objection exists to dhimmīs entering mosques. Imām Mālik considers it absolutely disliked (makrūh). The Shāfiʿī and Hanbalī Schools consider their entry disliked only in the Sacred Mosque (Masjid al-Harām) and permissible in other mosques (Al-Durr Al-Mukhtār, vol. 5, p. 175). The Shīʿa School deems it completely forbidden (Hillī, 1414 AH, vol. 9, p. 336). It should be noted that the issue of dhimmīs entering mosques, like previous cases, lacks great practical importance since they have no need to enter Muslim mosques. However, it reflects a school's attitude toward religious minorities. Undoubtedly, those who permit non-Muslims to enter mosques and those who deny this right demonstrate a clear difference in outlook. Therefore, it can be concluded that the Hanafi School treats religious minorities with respect.

Discussion

The findings of this research indicate that regarding the legal status of religious minorities, there are numerous commonalities and differences between the Hanafi School and other Schools of Islamic jurisprudence (fiqh). The commonalities far outweigh the differences. The number of contentious issues between Hanafi jurisprudence and the other Schools does not exceed five; however, the significance of these five issues is such that it can be argued the Hanafi School considers the status of religious minorities to be equal to and on par with that of Muslims, whereas the other Schools assume their status to be inferior. Therefore, other jurisprudential Schools differentiate between a Muslim and a dhimmī in critical matters such as retribution (qisās) and blood money (diyya) (Marghinānī, 1417 AH, vol. 8, p. 71). Undoubtedly, the perspective of Hanafi jurisprudence on this matter, in the contemporary world which has become a global village, is considered a sign of the dynamism of Islamic jurisprudence, and this works to the advantage of Muslims.

The foundation of the disagreement between Hanafi jurisprudence and the other Schools concerning religious minorities boils down to one point: whether the Ahl-Dhimmah (People of the Covenant) are the peers (kufūʾ) of Muslims or not. From the perspective of Jaʿfarī, Mālikī, Shāfiʿī, and Hanbalī jurisprudence, peerage is established based on two factors: Islam and freedom (hurriyah) (al-Shāfiʿī, 1990, vol. 6, p. 10). Consequently, a non-believer is not equal to a Muslim, and a free person is not equal to a slave. From the perspective of Hanafi jurisprudence, once the Islamic government signs a covenant with religious minorities and they accept the conditions—including the payment of the jizya—the Islamic government is obligated to uphold the terms of the covenant, including protection.

Thus, if someone intentionally kills a member of the religious minorities, the killer must be subject to retribution (qisās), even if they are Muslim. If the killing is unintentional, the blood money (diyya) for a dhimmī is equal to that of a Muslim. Furthermore, the practical conduct (sīrah) of the Prophet of Islam was such that he enforced retribution against a Muslim for the killing of a dhimmī (Marghinānī, 1417 AH, vol. 8, p. 13).

Conclusion

Religious minorities exist in all human societies, and Islamic countries are no exception. The history of minorities among Muslims is as ancient as Islam itself; from Islam's inception, Jewish minorities lived in Medina. Initially, some harsh incidents occurred between them and Muslims, but after they signed the dhimma contract with Islam, they were effectively recognized. From that point forward, specific laws were established concerning them. As Islamic territories expanded, the number of dhimmīs increased. When Islamic conquests expanded during the era of the Caliphs, besides Jews, Christians also became part of the religious minorities within Islamic lands. Consequently, specific jurisprudential rulings were issued regarding them. Most of these rulings are agreed upon by all Islamic Schools. However, cases exist where Schools' views differ. The topics of qisās (retribution) and diyya

(blood money) are among the most prominent and important jurisprudential matters with differing opinions. As mentioned, the basis in qisās and diyya concerns the equality or superiority of Muslim individuals compared to followers of other religions. Those who assign lower diyya for religious minorities naturally consider their value and status inferior to that of Muslims. Jurists have explicitly confirmed and emphasized this perspective.

However, as stated, the Hanafi School decisively regards the status of Muslims and dhimmīs as equal. This perspective, which represents a more humane view toward religious minorities, is ethically appropriate and can be effective and functional in today's world in interactions between nations and civilizations. It also presents Islam as a religion capable of engaging constructively with other faiths.

This research was conducted amidst numerous limitations and challenges. Primarily, it necessitated a comprehensive examination of jurisprudential sources from all Islamic Schools of thought. Subsequently, the commonalities and divergences in their perspectives needed to be identified. Finally, the comparative advantages of the Hanafi School's juristic opinions over other Islamic legal Schools had to be inferred.Given the limited timeframe, accomplishing this was no easy task; nevertheless, we exerted our utmost effort to ensure the research findings were presented in the best possible manner.

Ultimately, it is recommended that religious minorities be treated with respect. As long as they respect the laws of Islamic countries, respect should be reciprocated. As has been clearly demonstrated, the perspective of Hanafi jurisprudence towards religious minorities is one of respect and equality with Muslims. Other Muslims should also take inspiration from this approach. Furthermore, in articles and research published on this subject, greater use should be made of Hanafi jurisprudential sources.

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